IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 153 of 2000()

AGAINST THE ORDER DT.26.9.1999 IN CC.231/1997 of JUDL. MAGISTRATE OF FIRST CLASS-IV (MOBILE), TRIVANDRUM .

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PETITIONER : COMPLAINANT

KERALA FINANCIAL CORPORATION,
THIRUVANANTHAPURAM, REP.BY ITS
DISTRICT MANAGER, G.S. CHANDRASEKHARAN NAIR,
DISTRICT OFFICE, THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN
SRI.D.SAJEEV

RESPONDENTS: ACCUSED

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1. **M/S.SUPREME ENTERPRISES, PLOT NO.91,**
INDUSTRIAL DEVELOPMENT AREA,
VELI, THIRUVANANTHAPURAM, REP.BY
ITS MANAGING PARTNER,
PUSHPAGANDHINI.

2. **PUSHPAGANDHINI, MANAGING PARTNER,**
SUPREME ENTERPRISES, PLOT NO.91,
INDUSTRIAL DEVELOPMENT AREA ,
VELI, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 153 of 2000

Dated this the 21st day of February, 2007

Judgment

This is an appeal filed against the acquittal of the accused in a petition under section 138 of the Negotiable Instruments Act. Even though notice was ordered as early as on 2.3.2000, notice sent to first and second respondents were returned. Notice to first respondent was returned stating that the firm is not functioning and notice to second respondent was returned unserved stating that the respondent is in Andhra Pradesh. Thereafter, no steps were taken to cure the defect. Without serving notice on the accused, order or acquittal cannot be reversed. Apart from the above, being a criminal appeal, to avoid any traversity of justice, I have considered the merits of the matter. The trial court noticed that it was not proved that the cheques in question (Exts.P1 to P3) were issued for a legally enforceable liability. According to the complainant, first accused is a firm and second accused is the Managing Partner. Second respondent issued Exts.P1 to P3 cheques to discharge the liability of the firm. Establishment of the first respondent was taken over by the complainant financial institution. The industry was taken by the complainant under section 29 of

the Financial Corporations Act, 1951. PW1, examined on behalf of the complainant, admitted that the industry was taken possession by the complainant and it was subsequently auctioned for recovery of the debt and PW1 admitted that the amount mentioned in the cheque recovered by the auction includes the amount covered by Exts.P1 to P3. The firm was taken over by the complainant in January, 1995. Exts.P1 to P3 were seen issued after taking over the firm. The trial court found as follows at paragraph 11:

> "11. PW1 is having no definite case about the debt, liability and discharge. He has given three versions regarding it. In chief examination he deposed that Ext.P1 to P3 were issued for the discharge of the debt. In cross examination he deposed that the debt covered by Ext.P1 to P3 were discharged by taking over the possession of industry and by auctioning it. In re-examination he deposed that the amount covered by Ext.P1 to P3 were not recovered. In the absence of clear cogent and definite case the benefit of doubt has to be extended to the accused. In view of the inconsistent and contradictory statement of PW1 as to the debt and recovery of the debt it cannot be said that Exts.P1 to P3 were issued for the discharge of an ascertained debt. In the result, Point No.1 is answered against the complainant."

On going through the evidence, I am of opinion that the findings of the trial court at paragraph 11 is not perverse and it is a possible one. If a possible finding is entered by the trial court, this court will not interfere in the order of acquittal in appeal.

No separate notice was issued to first respondent. According to the complainant, registered notice was issued to the second respondent/second accused and Ext.P6 is the acknowledgement card. Second accused denied that notice was served on her. The following finding is mentioned in paragraph 19 of the trial court judgment:

> "19. The notice was not seen served on the accused. Admittedly, the signature in Ext.P6 differs from the signature in Ext.P1 to P3 and Ext.P10. PW1 admitted that the signature in Ext.P6 was not that of A2. The complainant examined the post master of the Titanium Post Office as PW3 to prove the delivery of the notice on A2. The evidence tendered by this witness is of little use to prove the delivery. PW3 deposed that the registered letter accompanied by Ext.P6 acknowledgement card was not delivered from his post office. After perusing Ext.P6 he deposed that Ext.P6 bears the seal of the Chala and Museum Post Offices. The address of the addressee in Ext.P6 is within the delivery area of the Veli Post Office.

> According to PW3 a registered letter accompanied by Ext.P6 was not delivered from the limits of the Veli Post Office. So it can be seen that Ext.P6 is a concocted document. No reliance can be placed on Ext.P6. Under these circumstance it can be safely concluded that no notice was served on the accused."

It was further found by the trial court that PW1 who filed the complaint is only a Chief Executive and no authorisation letter was produced to represent the complainant Corporation. From the totality of evidence, I am of the view that findings of the trial court is not perverse and it is a possible view. In the above circumstances, I see no ground to interfere in the order of acquittal. Appeal dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.153 of 2000

Judgment

21-2-2007